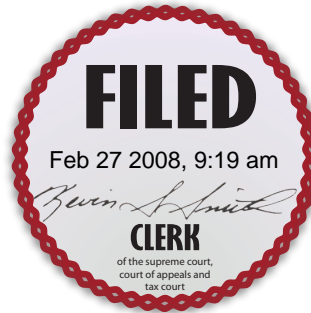


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JAMES R. STEPHENS,  
  
Appellant-Petitioner,

vs.

STATE OF INDIANA,  
  
Appellee-Respondent.

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No. 49A02-0704-PC-355

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APPEAL FROM THE MARION SUEPRIOR COURT  
The Honorable Nancy Broyles, Judge  
Cause No. 49G05-9805-PC-076033

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**February 27, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

James R. Stephens (“Stephens”) appeals the denial of his petition for post-conviction relief. On appeal, Stephens raises three issues, which we consolidate and restate as whether the trial court erred when it determined that Stephens was competent to stand trial.

We affirm.

### **Facts and Procedural History**

On May 13, 1998, the State charged Stephens with two counts of Class B felony burglary and two counts of Class D felony theft. Stephens then filed a motion for psychiatric examination to determine competence to stand trial, which the trial court granted. The trial court appointed Dr. Masbaum, a psychiatrist, to examine Stephens. Based on Dr. Masbaum’s report, the trial court found Stephens competent to stand trial. On June 30, 1999, Stephens waived counsel and proceeded pro se. On September 2, 1999, Stephens pleaded guilty as charged and the trial court sentenced him to an aggregate sentence of forty years. Stephens attempted to withdraw his guilty plea, but the trial court denied this motion.

### **Standard of Review**

The purpose of post-conviction proceedings is to afford petitioners a limited opportunity to raise issues that were unavailable or unknown at trial and on direct appeal. Reed v. State, 856 N.E.2d 1189, 1194 (Ind. 2006). These proceedings are not “super appeals” where issues can be raised which the convicted persons failed to raise at trial or on direct appeal. Id. Post-conviction proceedings are civil in nature, and petitioners bear

the burden of establishing their grounds for post-conviction relief by a preponderance of the evidence. Smith v. State, 822 N.E.2d 193, 198 (Ind. Ct. App. 2005), trans. denied.

An appeal of the denial of post-conviction relief is an appeal from a negative judgment. Allen v. State, 791 N.E.2d 748, 752 (Ind. Ct. App. 2003), trans. denied. “[T]o the extent his appeal turns on factual issues, the petitioner must convince this court that the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the post-conviction relief court.” Smith, 822 N.E.2d at 198 (citation omitted). “It is only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion, that its decision will be disturbed as contrary to law.” Godby v. State, 809 N.E.2d 480, 482 (Ind. Ct. App. 2004), trans. denied. We will accept the post-conviction court’s findings of fact unless they are clearly erroneous, yet we do not give deference to the court’s conclusions of law. Allen, 791 N.E.2d at 752.

### **Discussion and Decision**

Stephens argues that his competency had not been established therefore his guilty plea should not have been accepted.<sup>1</sup> Under Tumulty v. State, 666 N.E.2d 394, 395-396 (Ind. 1996), a person who pleads guilty is not permitted to challenge the validity of the plea on direct appeal but must do so through a post-conviction relief proceeding. In the case before us, Stephens believes that his guilty plea was invalid as, he alleges, his competence to stand trial had not been determined by the trial court.

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<sup>1</sup> The other issues presented by Stephens of the trial court’s failure to provide a full and adequate psychiatric examination and granting his request to proceed pro se cannot be presented on post-conviction review. Those issues were known and available at the time of the guilty plea and must be presented on direct appeal. Collins v. State, 817 N.E.2d 230, 231-232 (Ind. 2004).

At trial, Stephens bore the burden of establishing his incompetence by preponderance of the evidence, since there is a presumption of competence. See Cooper v. Oklahoma, 517 U.S. 348, 116 S.Ct. 1373 (1996). The trial court determined that Stephens did not overcome his burden and found that he was competent after receiving Dr. Masbaum's report and observing his interactions with the court, including filing of motions, presenting exhibits at a hearing, and argument before the court. Appellant's App. pp. 132-33.

Stephens' entire argument hangs on the fact that the trial court appointed only one physician to examine him and that the trial court did not follow the procedure set forth in Indiana Code section 35-36-3-1 (1998), which includes a hearing. However, "the right to a competency hearing is not absolute." Adams v. State, 386 N.E.2d 657, 659 (Ind. 1979). Also, the appointment of physicians does not require that the trial court hold a hearing pursuant to Indiana Code section 35-36-3-1 (1998). Id. The trial court is not required to hold a hearing unless the evidence raises "a reasonable or bona fide doubt as to the competence of the accused." Brewer v. State, 646 N.E.2d 1382, 1384 (Ind. 1995). The post-conviction court found that Dr. Masbaum concluded that Stephens "does have comprehension sufficient to understand the nature of the proceedings" and "was of sound mind at the time of the alleged offenses."<sup>2</sup> Appellant's App. p. 132.

Here, the trial court determined that Stephens was competent to stand trial and the only evidence of any incompetence was an assertion by Stephens' first attorney where

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<sup>2</sup> Stephens failed to provide Dr. Masbaum's report that would have been of immense help in dispensing with this case and raises questions considering that the post-conviction court also noted this lack in his post-conviction relief petition.

she believed that he was “severely depressed.” This is certainly a “naked assertion” and was the only possible indicia of incompetence. See Green v. State, 421 N.E.2d 635, 637 (Ind. 1981). Under Indiana Code section 35-36-3-1 (2004), the trial court can examine a defendant’s incompetence given reasonable grounds. Simply said, the trial court did not believe that there were reasonable grounds to question his competence, and we agree.

Stephens has provided no evidence that he was incompetent at the time of his guilty plea and therefore cannot establish that his guilty plea was invalid. In fact, the trial court questioned Stephens at the time of the plea to determine his competence to plead guilty and was satisfied. This appears to be a case of buyer’s remorse, where Stephens decided after entering his guilty plea and receiving his sentence that he did not like the outcome. The post-conviction court found that Stephens had failed to provide any additional evidence that would show his incompetence at the time or other error by the trial court. We agree.

Under these facts and circumstances, we conclude that the post-conviction court did not err in determining that Stephens knowingly and voluntarily pleaded guilty.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.